

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

Mr. Brandon Smith
Mr. John Jackson
d.b.a. Wholesale CB Radio
5320 North Hwy 97
Sand Springs, OK 74063

File No.: EB-04-DL-033
Citation: C20043250003
Sent via Certified
Return Receipt Requested
and First Class U.S. Mail

CITATION

Released: August 6, 2004

By the Enforcement Bureau, Dallas Office:

1. This is an Official Citation issued pursuant to Section 503(b)(5) of the Communications Act of 1934, as amended ("Act"),¹ to Messrs. Brandon Smith and John Jackson d.b.a. Wholesale CB Radio for violation of Section 302(b) of the Act,² and Sections 2.803(a)(1) and 2.815(b)&(c) of the Commission's Rules.³

2. An investigation by the FCC's Dallas Office revealed that the Internet domain name www.wholesalecbradio.com is registered to Smith & Jackson, Inc., 1032 N. Birch, Sand Springs, OK 74063 with John Jackson, brandonjjgs@AOL.COM, Smith & Jackson Inc., 1032 N. Birch, Sand Springs, OK 74063 listed as the administrative and technical contact. Furthermore, on July 29, 2004, Messrs. Brandon Smith and John Jackson d.b.a. Wholesale CB Radio through the Internet site www.wholesalecbradio.com (with an address currently listed on the site as "Wholesale CB Radio, 5320 North Hwy 97, Sand Springs, OK 74063", but previously listed as "1032 N. Birch, Sand Springs, OK 74063") offered for sale, the following fifty-five (55) non-certified Citizens Band transceivers:

| <u>NAME</u> | <u>MODEL</u> | <u>PRICE</u> | <u>DESCRIPTION</u> |
|-------------|-------------------|--------------|--|
| Connex | 3300 | \$179.99 | "Export CB Radio", "AM/FM", "Band Switch" |
| Connex | 3300LE | \$189.99 | "Export CB Radio", "AM/FM", "Band Switch" |
| Connex | 3300HP | \$214.99 | "Export CB Radio", "Band Switch-Hi/Low" |
| Connex | 3300HP LE | \$229.99 | "Export CB Radio", "Band Switch-Hi/Low" |
| Connex | 3300HP Patriot Ed | \$219.99 | "Export CB Radios", "25.615-28.305", 6 bands |
| Connex | 4400HP | \$229.99 | "Export CB Radio", "over 300 channels" |
| Connex | 4800DXL | \$309.99 | "Export CB Radio", "12 Bands" |
| Connex | Coyote Hunter | \$169.99 | "Export CB Radio", "5 band, selector" |
| Connex | Deer Hunter | \$159.99 | "Export CB Radio", "3 band" |
| Galaxy | DX33HML | \$169.99 | "Export Radio" |
| Galaxy | DX44V | \$199.99 | "Export Radio" |
| Galaxy | DX45MP | \$229.99 | "CB Radio", "Band selector (8 pos)" |
| Galaxy | 48T | \$349.99 | "CB Radio", "50 watts for AM and FM" |
| Galaxy | DX55V | \$179.99 | "Export Radio" |

¹ 47 U.S.C. § 503(b)(5)

² 47 U.S.C. § 302a(b)

³ 47 C.F.R. § 2.803(a)(1)

| <u>NAME</u> | <u>MODEL</u> | <u>PRICE</u> | <u>DESCRIPTION</u> |
|-------------|-------------------|--------------|--|
| Galaxy | DX66V | \$259.99 | “Export Radio”, “8 Watts” |
| Galaxy | DX77HML | \$239.99 | “Export Radio”, 10w AM / 25w SSB |
| Galaxy | DX88HL | \$319.99 | “CB Radio”, “band switch” |
| Galaxy | DX93T | \$389.99 | “CB Radio”, 20w AM/FM, 50w SSB |
| Galaxy | DX95T | \$429.99 | “Export CB Radio”, 200w PEP AM&SSB |
| Galaxy | DX99V | \$349.99 | “CB Radio”, “band control” |
| Galaxy | DX 2517 | \$449.99 | “Base Export CB Radio”, “band select” |
| General | Grant | \$439.99 | “Export Radio”, “12 Bands of 40 Channels” |
| General | A.P. Hill | \$189.95 | “Export Radio”, “6 Bands of 40 Channels” |
| General | Stonewall Jackson | \$529.99 | “10 Meter Export Base”, “Mods included” |
| General | Lee | \$209.99 | “Export Radio”, “6 Bands of 40 Channels” |
| General | Longstreet | \$239.99 | “Export Radio”, “6 Bands of 40 Channels” |
| Magnum | 257 | \$199.99 | “10 Meter CB Radio”, “30 watts output power” |
| Magnum | 357 DX | \$369.99 | “10 Meter CB Amateur Radio” |
| Magnum | DeltaForce | \$239.99 | “10 Meter CB Radio” |
| Magnum | Megaforce S45 | \$279.99 | “10 Meter CB Radio” |
| Magnum | S-3 | \$219.99 | “10 Meter CB Radio” |
| Magnum | S-9 | \$339.99 | “10 meter Radio”, 9w AM / 40w SSB/FM |
| Magnum | S 3200 | \$299.99 | “10 Meter Export has 8 bands of Channels” |
| Maverick | A24 | \$204.99 | “10 Meter CB Radio”, “AM/FM Modes” |
| Mirage | 44 | \$209.95 | “Export CB Radio has 361 AM/FM Channels” |
| Mirage | 88 | \$319.95 | “Export CB Radio”, 361 channels |
| Mirage | 2950 EX | \$289.95 | “Export CB Radio”, 8w AM/FM, 25w SSB |
| Mirage | 6600 | \$259.95 | “Export CB Radio”, “AM/FM”, “Band switch” |
| Mirage | 9900 HP | \$349.95 | “Export CB Radio has 361 Channels” |
| President | HR-2510 | Used | |
| Ranger | R.C.I. 2950 DX | \$299.99 | “Export 10 meter”, “30watts”, “CB/PA” |
| Ranger | R.C.I. 2970 DX | \$419.99 | “Export 10 meter”, “100watts+”, “CB/PA” |
| Ranger | RCI-2980WX | \$479.95 | “CB Radio”, base, 10w AM/FM/CW, 25w SSB |
| Ranger | RCI-2985 | \$474.95 | “Export CB Radio”, base, AM/FM/CW, SSB |
| Ranger | RCI-2995DX | \$594.95 | “Export CB Radio”, base 50w / 150w |
| Ranger | RCI-6300 F25 | \$279.99 | “Export CB Radio”, “Band selector (12 pos)” |
| Ranger | RCI-6300 F150 | \$399.99 | “Export CB Radio”, “100watts+” |
| Ranger | RCI-6900 F25 | \$309.99 | “Export CB Radio”, “40w” |
| Ranger | RCI-6900 F150 | \$439.99 | “Export CB Radio”, “100watts+” |
| Ranger | SS 3900GHP | \$189.99 | “Export”, “CB Radio”, “Band selector (6)” |
| Ranger | SS 3900GHP-M | \$199.99 | “Export”, “CB Radio”, “Band selector (6)” |
| Superstar | 121 | \$159.99 | “Export CB Radio”, “band switch” |
| Superstar | Chrome Face | \$194.99 | “360 Channels”, “channel 9 switch” |
| Superstar | SS 3900HP Gold | \$229.99 | “Export CB Radio”, “Band Selector (A-F)” |
| Voyage | VR 9000 | \$239.99 | “Export CB Radio”, 12w AM / 25w PEP |

According to the Commission's records, these devices have not received an FCC equipment authorization which is required for Citizens Band transmitters marketed in the United States.

3. Section 302(b) of the Act² provides “[n]o person shall manufacture, import, sell, offer for sale, or ship

devices or home electronic equipment and systems, or use devices, which fail to comply with regulations promulgated pursuant to this section.” Section 2.803(a)(1) of the Rules³ provides that “... no person shall sell or lease, or offer for sale or lease (including advertising for sale or lease), or import, ship or distribute for the purpose of selling or leasing or offering for sale or lease, any radio frequency device unless: (1) In the case of a device subject to certification, such device has been authorized by the Commission in accordance with the rules in this chapter and is properly identified and labeled” Messrs. Brandon Smith’s and John Jackson’s (d.b.a. Wholesale CB Radio) offer for sale of these devices violates both sections.

4. Messrs. Brandon Smith and John Jackson d.b.a. Wholesale CB Radio marketed these devices as amateur and/or Citizens Band transceivers. The Commission has evaluated radiofrequency devices similar to those listed in paragraph 2 and concluded that the devices at issue are not only amateur radios but can easily be altered for use as Citizens Band devices as well. A CB transmitter is a transmitter that operates or is intended to operate at a station authorized for the CB service, and it must be certificated by the FCC prior to marketing or importation.⁴ The Commission has further concluded that these devices fall within the definition of a CB transmitter and therefore cannot legally be imported or marketed in the United States. *See* Response from the Commission’s General Counsel to U.S. Customs Service dated May 17, 1999, 14 FCC Rcd 7797 (1999).

5. Additionally, dual use CB and amateur radios of the kind at issue here may not be certificated under the Commission’s rules. Section 95.655(a) of the Rules⁵ states: “.... ([CB] Transmitters with frequency capability for the Amateur Radio Services will not be certificated.)” *See also* FCC 88-256, 1988 WL 488084 (August 17, 1988). This clarification was added to explicitly foreclose the possibility of certification of dual use CB and amateur radios, *see id.*, and thereby deter use by CB operators of frequencies allocated for amateur radio use.

6. Furthermore, the Commission has revised Section 2.1204(a)(5) of its Rules⁶ to prohibit all marketing and/or offering for sale in the United States of such devices even when the purchaser(s) had provided assurances that the transceivers are being bought solely for export. **ALL DOMESTIC MARKETING OF SUCH DEVICES VIOLATES THE COMMUNICATIONS ACT OF 1934, AS AMENDED, AND THE COMMISSION’S RULES.**

7. In addition to the marketing of the non-certified transceivers addressed above, Messrs. Brandon Smith and John Jackson d.b.a. Wholesale CB Radio are warned that Section 302(b) of the Act⁷, and Section 2.815(c) of the Commission’s Rules⁷ requires FCC Type Acceptance (or Certification) of External Radio Frequency Power Amplifiers (or amplifier kits) capable of operation on any frequency or frequencies below 144 MHz. Furthermore, Section 2.815(b) of the Commission’s Rules⁸ prohibits the marketing of External Radio Frequency Power Amplifiers (or amplifier kits) capable of operation on any frequency or frequencies between 24 and 35 MHz. Non-certified External RF Power Amplifiers requiring certification include, but are not limited to, the following brands: Boomer, Cobra, Comet, Galaxy, Golden Eagle, Intruder, KL, KLV, Magna Force, Messenger, Palomar, RM, Sandman, Shockwave, Skipper, Tennessee Walker, Texas Star, TNT and XForce.

8. Subsequent violations of the Communications Act and/or of the Commission’s Rules may subject the

⁴ See 47 C.F.R. §§ 95.603(c) & 2.803

⁵ 47 C.F.R. § 95.655(a)

⁶ 47 C.F.R. § 2.1204(a)(5) revised effective February 28, 2000

⁷ 47 C.F.R. § 2.815(c)

⁸ 47 C.F.R. § 2.815(b)

violator to substantial monetary forfeitures not to exceed \$11,000 for each such violation or each day of a continuing violation,⁹ seizure of equipment through *in rem* forfeiture action, and criminal sanctions including imprisonment.¹⁰

9. Messrs. Brandon Smith and John Jackson d.b.a. Wholesale CB Radio may request a personal interview at the closest FCC location to its place of business,¹¹ namely:

Federal Communications Commission
9330 LBJ Freeway, Suite 1170
Dallas, Texas 75243-3470

which can be contacted by telephone at XXX XXX-XXXX. They must schedule this interview to take place within 14 days of the date of this citation. Messrs. Brandon Smith and John Jackson d.b.a. Wholesale CB Radio may submit a written statement within 14 days of the date of this citation to the following address:

Federal Communications Commission
9330 LBJ Freeway, Suite 1170
Dallas, Texas 75243-3470

which can be contacted by telephone at XXX XXX-XXXX. Any written statement should specify what actions have been taken to correct the violation outlined above. When corresponding with the Commission, case number EB-04-DL-033 and citation number C20043250003 should be referenced.

10. Any statement or information provided may be used by the Commission to determine if further enforcement action is required.¹² Any knowingly or willfully false statement made in reply to this notice is punishable by fine or imprisonment.¹³

FEDERAL COMMUNICATIONS COMMISSION

James D. Wells
District Director - Dallas Office

LRB

Cc: Mr. Brandon Smith
Mr. John Jackson
d.b.a. Wholesale CB Radio
1032 Birch
Sand Springs, OK 74063

⁹ See 47 C.F.R. § 1.80(b)(3)

¹⁰ See 47 U.S.C. §§ 401, 501, 503, 510

¹¹ See 47 U.S.C. § 503(b)(5)

¹² See Privacy Act of 1974, 5 U.S.C. § 552a(e)(3)

¹³ See 18 U.S.C. §1001